



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,862	07/26/2001	David A. Eatough	884.495US1	7695

21552 7590 11/13/2006

MADSON & AUSTIN
GATEWAY TOWER WEST
SUITE 900
15 WEST SOUTH TEMPLE
SALT LAKE CITY, UT 84101

EXAMINER

YIGDALL, MICHAEL J

ART UNIT PAPER NUMBER

2192

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,862

Applicant(s)

EATOUGH ET AL.

Examiner

Michael J. Yigdall

Art Unit

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 5-10, 12-17, 20-23, 25, 28, 29, 31 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5-10, 12-17, 20-23, 25, 28, 29, 31 and 34-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 7, 2006 has been entered. Claims 1, 3, 5-10, 12-17, 20-23, 25, 28, 29, 31 and 34-36 are now pending.

Response to Arguments

2. Applicant's arguments have been fully considered but they are not persuasive.

Applicant states that executable files and "software code" are not the same (remarks, page 14, top), and thus contends that Barritz does not disclose, teach or suggest "obtaining information relating to the at least one of the plurality of application programs and the corresponding at least one designated software code by automated examination of the executable code," as recited in claims 1, 17, 25 and 31 (remarks, page 14, bottom).

First, however, it is noted that the "software code" recited in the claims is, in fact, executable. Furthermore, the rejection of the claims is based on a combination of references. As set forth in the final Office action mailed on June 7, 2006, Saboff suggests the "database" recited in the claims, and Barritz suggests the limitation wherein "configuring the database" comprises "obtaining information ... by automated examination" and "entering the information into the database." In Saboff, the registry or database includes "information relating to the at least one of the plurality of application programs and the corresponding at least one designated software

Art Unit: 2192

code” (see, for example, FIG. 5 and column 6, line 43 to column 7, line 13). Saboff is silent as to obtaining this information “by automated examination.” Nonetheless, as noted above, Barritz suggests “obtaining information ... by automated examination” and “entering the information into the database.” Thus, the combination of Saboff and Barritz teaches or suggests “obtaining information relating to the at least one of the plurality of application programs and the corresponding at least one designated software code by automated examination of the executable code,” as presented in the claim rejections below.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 3, 5-10, 12-17, 20-23, 25, 28, 29, 31 and 34-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

With respect to claim 1 (currently amended), the claim recites “the at least one of the plurality of application programs” in line 9, for which there is insufficient antecedent basis. It is not clear whether this refers to “the selected application program” recited in the claim or to some other of the plurality of application programs. Likewise, the claim recites “the executable code” in line 11, for which there is insufficient antecedent basis. It is not clear whether this refers to “the at least one of the plurality of application programs” or to “the corresponding at least one designated software code,” or to some other executable code not established in the claim.

With respect to claims 3, 5-10 and 12-16, the claims are dependent on claim 1, and are therefore indefinite for at least the same reasons.

With respect to claim 17 (currently amended), the claim recites “the at least one of the plurality of applications programs” in lines 13-14 and “the executable code” in line 15, for which there is insufficient antecedent basis, such as noted above for claim 1.

With respect to claims 20-23, the claims are dependent on claim 17, and are therefore indefinite for at least the same reasons.

With respect to claim 25 (currently amended), the claim recites “the at least one of the plurality of applications programs” in lines 15-16 and “the executable code” in line 17, for which there is insufficient antecedent basis, such as noted above for claim 1.

With respect to claims 28 and 29, the claims are dependent on claim 25, and are therefore indefinite for at least the same reasons.

With respect to claim 31 (currently amended), the claim recites “the at least one of the plurality of applications programs” in line 10 and “the executable code” in line 12, for which there is insufficient antecedent basis, such as noted above for claim 1.

With respect to claims 34-36, the claims are dependent on claim 31, and are therefore indefinite for at least the same reasons.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Art Unit: 2192

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1, 3, 5-10, 12, 13, 17, 20-23, 25, 28, 29, 31 and 34-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to claims 1, 3, 5-10, 12 and 13, the claims are directed to a method for managing execution of a software code by a selected application program. However, the claims do not provide a practical application of the method to produce a useful, concrete and tangible result, and are therefore directed to non-statutory subject matter. See MPEP § 2106.

Merely “confirming a conflict,” as recited in claim 1, does not amount to a useful, concrete and tangible result. However, “reporting the conflict,” such as recited in claims 14 and 16, for example, is considered a useful, concrete and tangible result, and thus would provide a practical application commensurate with Applicant’s specification.

With respect to claims 17 and 20-23, the claims are directed to a computer workstation. However, the claims do not provide a practical application of the computer workstation to produce a useful, concrete and tangible result, and are therefore directed to non-statutory subject matter, such as noted above for claims 1, 3, 5-10, 12 and 13.

With respect to claims 25, 28 and 29, the claims are directed to a computer system network. However, the claims do not provide a practical application of the computer system network to produce a useful, concrete and tangible result, and are therefore directed to non-statutory subject matter, such as noted above for claims 1, 3, 5-10, 12 and 13.

With respect to claims 31 and 34-39, the claims are directed to a machine-accessible medium having instructions associated therewith for managing execution of a software code by a selected application program. However, the claims do not provide a practical application of the machine-accessible medium to produce a useful, concrete and tangible result, and are therefore directed to non-statutory subject matter, such as noted above for claims 1, 3, 5-10, 12 and 13.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3, 5-10, 12-17, 20-23, 31 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,634,114 to Shipley (art of record, "Shipley") in view of U.S. Patent No. 6,185,734 to Saboff et al. (art of record, "Saboff") in view of U.S. Patent No. 5,590,056 to Barritz (art of record, "Barritz").

With respect to claim 1 (currently amended), Shipley discloses a method for managing execution of a software code by a selected application program (see, for example, the abstract).

Although Shipley discloses configuring a table for a selected application program, wherein the application program corresponds to at least one designated software code (see, for example, column 6, lines 25-36), and wherein the corresponding at least one designated software

code is not the software code loaded or executed by the selected application program (see, for example, column 7, lines 12-13), Shipley does not expressly disclose:

(a) configuring a database having a plurality of application programs, wherein each one of the plurality of application programs corresponds to at least one designated software code, wherein the plurality of application programs includes the selected application program, and wherein the corresponding at least one designated software code is not the software code executed by the selected application program.

However, Saboff discloses a registry or database having a plurality of application programs, wherein each one of the plurality of application programs corresponds to at least one designated software code, and wherein the plurality of application programs includes the selected application program (see, for example, FIG. 4 and column 5, lines 22-44). The registry or database enables different users, groups, processes or environments to use different versions of the same library simultaneously, without re-linking the application programs (see, for example, column 3, lines 34-42).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the table of Shipley with the registry or database taught by Saboff, so that the version negotiation system disclosed by Shipley could further enable different users, groups, processes or environments to use different versions of the same library simultaneously.

Saboff further discloses that the database comprises information relating to the at least one of the plurality of application programs and the corresponding at least one designated software code (see, for example, FIG. 5 and column 6, line 43 to column 7, line 13), but does not expressly disclose the limitation wherein configuring the database further comprises obtaining

the information by automated examination of the executable code and entering the information into the database.

However, Barritz discloses obtaining information relating to a plurality of application programs by automated examination of the executable code and entering the information into a database (see, for example, column 4, lines 44-47 and 50-53, and column 5, lines 13-16, which shows a surveying program for periodically obtaining information relating to a plurality of application programs by automated examination, and column 5, lines 30-34, which shows surveying program entering the information into a system configuration log or database).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the version negotiation system of Shipley with the surveying program taught by Barritz, so as to periodically obtain information relating to the at least one of the plurality of application programs and the corresponding at least one designated software code by automated examination of the executable code.

Although Shipley discloses that the application program calls subroutines within the DLL (see, for example, column 4, lines 43-44), and although such calls could not operate without the execution environment inherently detecting the calls and invoking the DLL, Shipley does not expressly disclose:

(b) detecting the execution of all or a portion of the software code, wherein the detecting is not performed by the software code.

However, Barritz discloses detecting the execution of software code (see, for example, column 2, line 63 to column 3, line 4), wherein the detecting is performed by a monitoring program, and not by the software code (see, for example, column 6, lines 54-57). The

monitoring program enables features such as detecting the use of obsolete versions of the software code (see, for example, column 3, lines 4-8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the version negotiation system of Shipley with the monitoring program taught by Barritz, so as to detect the execution of obsolete versions of the software code.

Although Shipley discloses that the selected application uses and interacts with the DLL (see, for example, FIGS. 2 and 3), and thus the selected application is inherently identified and made known to the DLL, Shipley does not expressly disclose:

(c) identifying the selected application program that is executing the software code.

However, Barritz further discloses that the monitoring program identifies the application program that is executing the software code (see, for example, column 6, lines 58-65).

Shipley further discloses:

(d) confirming a conflict between the selected application program and the software code (see, for example, column 7, lines 12-18).

Although Shipley discloses that the conflict is confirmed after the loading of the software code has been detected (see, for example, column 7, lines 8-11, which shows that the application program first calls the software code before the conflict is confirmed, and column 5, lines 21-38, which further shows that the software code is loaded before it is called), Shipley does not expressly disclose that the conflict between the selected application program and the software code is confirmed after the execution of the software code has been detected.

However, Barritz further discloses that conflicts, such as the execution of obsolete versions of the software code noted above (see, for example, column 3, lines 4-8), are reported or

confirmed after the execution of the software code has been detected and recorded (see, for example, column 8, lines 43-63).

With respect to claim 3 (previously presented), Shipley in view Saboff in view of Barritz further discloses the limitation wherein configuring the database further includes:

(a) obtaining information relating to at least one of the plurality of application programs and corresponding at least one designated software code in a non-automated fashion (see, for example, Shipley, column 8, lines 23-30, which shows configuring the table or database by obtaining information from the programmer, in a non-automated fashion).

With respect to claim 5 (previously presented), Shipley in view of Saboff in view of Barritz further discloses the limitation wherein configuring the database further includes:

(a) entering information relating to the at least one of the plurality of application programs and the corresponding at least one designated software code by using a snapshot of installation activity required for the at least one of the plurality of application programs (see, for example, Barritz, column 4, lines 44-47, and column 9, lines 41-47, which shows a surveying program for entering information relating to the plurality of application programs based on installation activity, so as to automatically keep the information current).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the version negotiation system of Shipley in view of Saboff with the surveying program taught by Barritz, so as to automatically keep the database current with information relating to the at least one of the plurality of application programs and the corresponding at least one designated software code.

With respect to claim 6 (previously presented), Shipley in view of Saboff in view of Barritz further discloses the limitation wherein at least one of the plurality of applications programs is associated with a system resident installation package, and wherein configuring the database further includes:

(a) entering information relating to the at least one of the plurality of application programs and the corresponding at least one designated software code by automated examination of the system resident installation package (see, for example, Barritz, column 4, lines 44-47, and column 9, lines 41-47, which shows a surveying program for entering information relating to the plurality of application programs based on a software installation, so as to automatically keep the information current; also see, for example, Barritz, column 5, lines 30-34, which shows the surveying program consulting a knowledge base, and lines 40-62, which shows that the knowledge base includes information provided by the software vendor).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the software installation disclosed by Barritz using an installation package resident on the system. Such installation packages are common in the art, and would serve to provide the information from the vendor to the knowledge base, as further disclosed by Barritz. Subsequently, it would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the version negotiation system of Shipley in view of Saboff with the surveying program taught by Barritz, so as to automatically keep the database current with information relating to the at least one of the plurality of application programs and the corresponding at least one designated software code.

With respect to claim 7 (previously presented), Shipley in view of Saboff in view of Barritz further discloses the limitation wherein confirming a conflict between the software code and the selected application program further includes:

(a) determining that the software code is not the same as the corresponding at least one designated software code (see, for example, Shipley, column 7, lines 8-18).

With respect to claim 8 (previously presented), Shipley in view of Saboff in view of Barritz further discloses the limitation wherein the corresponding at least one designated software code has a version number which differs from a version number associated with the software code executed by the selected application program (see, for example, Shipley, column 7, lines 8-18, which shows differing version numbers), and wherein determining that the improper software code is not the same as the corresponding at least one designated software code further includes:

(a) determining the version number of the corresponding at least one designated software code and the version number of the software code executed by the selected application program (see, for example, Shipley, column 7, lines 8-10 and 17-18, which shows determining the version numbers); and

(b) comparing the version number of the corresponding at least one designated software code to the version number of the software code executed by the selected application program (see, for example, Shipley, column 7, lines 10-11, which shows comparing the version numbers).

With respect to claim 9 (previously presented), Shipley in view of Saboff in view of Barritz further discloses the limitation wherein the software code is a software library (see, for

example, Shipley, column 4, lines 37-40, which shows a dynamic link library), and wherein detecting execution of the software code further includes:

(a) enabling detection of a library loading operation (see, for example, Barritz, column 6, lines 58-60, which shows detecting a library loading operation).

With respect to claim 10 (original), Shipley in view of Saboff in view of Barritz further discloses the limitation wherein enabling detection of a library loading operation further includes:

(a) setting a software hook activated by the library loading operation (see, for example, Barritz, column 8, lines 25-35).

With respect to claim 12 (original), Shipley in view of Saboff in view of Barritz further discloses the limitation wherein identifying the selected application program further includes:

(a) determining a file name of the selected application program (see, for example, Barritz, column 6, lines 58-65, and column 5, lines 2-4).

With respect to claim 13 (original), Shipley in view of Saboff in view of Barritz further discloses the limitation wherein the selected application program has an application version number (see, for example, Shipley, column 6, lines 2-7), and wherein identifying the selected application program further includes:

(a) determining the application version number (see, for example, Shipley, column 6, lines 24-26).

With respect to claim 14 (original), Shipley in view of Saboff in view of Barritz further discloses:

- (a) reporting the conflict (see, for example, Shipley, column 7, lines 14-17); and
- (b) alerting a selected party regarding the conflict (see, for example, Shipley, column 7, lines 28-30, which shows alerting a selected party with an error message).

With respect to claim 15 (original), Shipley in view of Saboff in view of Barritz further discloses the limitation wherein the selected party is an end user of the selected application program (see, for example, Shipley, column 7, lines 30-33, which shows alerting the user).

With respect to claim 16 (original), Shipley in view of Saboff in view of Barritz further discloses:

- (a) reporting the conflict (see, for example, Shipley, column 7, lines 14-17); and
- (b) activating an alarm (see, for example, Shipley, column 7, lines 28-30, which shows activating an error trap or alarm).

With respect to claim 17 (currently amended), the limitations recited in the claim are analogous to the limitations recited in claim 1 (see the rejection of claim 1 above). Note that Shipley further discloses a computer workstation comprising a processor module and a machine-accessible medium (see, for example, FIG. 6).

With respect to claim 20 (previously presented), the limitations recited in the claim are analogous to the limitations recited in claim 7 (see the rejection of claim 7 above).

With respect to claim 21 (previously presented), the limitations recited in the claim are analogous to the limitations recited in claim 8 (see the rejection of claim 8 above).

With respect to claim 22 (previously presented), the limitations recited in the claim are analogous to the limitations recited in claim 9 (see the rejection of claim 9 above).

With respect to claim 23 (original), the limitations recited in the claim are analogous to the limitations recited in claim 10 (see the rejection of claim 10 above).

With respect to claim 31 (currently amended), the limitations recited in the claim are analogous to the limitations recited in claim 1 (see the rejection of claim 1 above). Note that Shipley further discloses a machine-accessible medium (see, for example, FIG. 6).

With respect to claim 34 (previously presented), the limitations recited in the claim are analogous to the limitations recited in claim 7 (see the rejection of claim 7 above).

With respect to claim 35 (previously presented), the limitations recited in the claim are analogous to the limitations recited in claim 8 (see the rejection of claim 8 above).

With respect to claim 36 (previously presented), the limitations recited in the claim are analogous to the limitations recited in claim 9 (see the rejection of claim 9 above).

9. Claims 25, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shipley in view of Saboff in view of Barritz, and further in view of U.S. Patent No. 5,960,204 to Yinger et al. (art of record, "Yinger").

With respect to claim 25 (currently amended), the limitations recited in the claim are analogous to the limitations recited in claim 1 (see the rejection of claim 1 above).

Although Barritz discloses that the monitoring program may operate in a computer system network (see, for example, Barritz, column 11, lines 26-38), Shipley in view of Saboff in view of Barritz does not expressly disclose:

- (a) a server to perform the recited method steps; and
- (b) a client communicatively coupled to the server, wherein execution of the selected application program is initiated by the client.

However, Yinger discloses a server and a client communicatively coupled to the server by a computer system network (see, for example, FIG. 4). The client initiates the execution of a selected application program (see, for example, column 7, lines 48-62). The client/server system enables the application program to be automatically updated to the most recent version (see, for example, column 2, lines 1-9). Yinger further discloses that the application program corresponds to at least one designated software code, such as a DLL (see, for example, column 8, lines 7-16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the version negotiation system of Shipley in view of Saboff in view of Barritz in a computer system network comprising a server and client as taught by Yinger, so as to automatically update the software when there is a conflict.

With respect to claim 28 (previously presented), Shipley in view of Saboff in view of Barritz in view of Yinger further disclose the limitation wherein the database is stored on the server (see, for example, Yinger, column 6, lines 40-43 and 53-55).

With respect to claim 29 (original), the limitations recited in the claim are analogous to the limitations recited in claim 7 (see the rejection of claim 7 above).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Yigdall whose telephone number is (571) 272-3707. The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm.

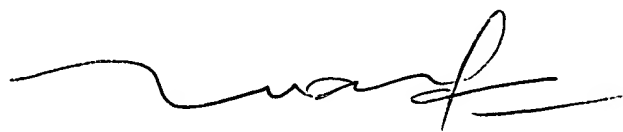
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MY

Michael J. Yigdall
Examiner
Art Unit 2192

mjy



TUAN DAM
SUPERVISORY PATENT EXAMINER